

tation provision for any project financed with interstate funds.

1973—Subsec. (a). Pub. L. 93-87 authorized payments to be made for materials not in the construction vicinity where the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.

1963—Subsec. (d). Pub. L. 88-157 substituted “any project financed with Federal-aid primary, secondary, or urban funds” for “any one project” and provided for limitation, on payments for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of Federal share of cost of construction of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

SUBMISSION OF RECOMMENDATIONS TO CONGRESS FOR REIMBURSEMENT OF STATES FOR CERTAIN HIGHWAYS

Pub. L. 85-845, Aug. 28, 1958, 72 Stat. 1083, required Secretary of Commerce, within ten days after first day of first session of Eighty-sixth Congress, to submit to Congress recommendations for legislation for purpose of assisting Congress to determine whether or not to reimburse each State of any portion of a toll or free highway (1) which was on National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways], (2) which met standards required by Federal-Aid Highway Act of 1956 for such System of Interstate and Defense Highways, and (3) construction of which had been completed since Aug. 2, 1947, or which had been in actual use or under construction by contract, for completion, awarded not later than June 30, 1957.

§ 122. Payments to States for bond and other debt instrument financing

(a) DEFINITION OF ELIGIBLE DEBT FINANCING INSTRUMENT.—In this section, the term “eligible debt financing instrument” means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement, issued by a State or political subdivision of a State or a public authority, the proceeds of which are used for an eligible project under this title.

(b) FEDERAL REIMBURSEMENT.—Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for—

- (1) interest payments under an eligible debt financing instrument;
- (2) the retirement of principal of an eligible debt financing instrument;
- (3) the cost of the issuance of an eligible debt financing instrument;
- (4) the cost of insurance for an eligible debt financing instrument; and
- (5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) CONDITIONS ON PAYMENT.—The Secretary may reimburse a State or public authority under subsection (b) with respect to a project

funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) FEDERAL SHARE.—The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) STATUTORY CONSTRUCTION.—Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not—

- (1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or
- (2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 95-599, title I, §115(b), Nov. 6, 1978, 92 Stat. 2698; Pub. L. 97-424, title I, §107(f), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100-17, title I, §133(b)(7), Apr. 2, 1987, 101 Stat. 171; Pub. L. 104-59, title III, §311(a), Nov. 28, 1995, 109 Stat. 583.)

AMENDMENTS

1995—Pub. L. 104-59 amended section generally, substituting present provisions for provisions which authorized States to use portion of Federal highway payments to retire principal of bonds proceeds of which were used for certain Federal highway projects.

1987—Pub. L. 100-17 inserted “or for substitute highway projects approved under section 103(e)(4) of this title” before “and the retirement” in first sentence.

1983—Pub. L. 97-424 inserted “or for substitute highway projects approved under section 103(e)(4) of this title,” after “highway systems in urban areas,” and “or on highway projects approved under section 103(e)(4) of this title” after “expenditure on such system”.

1978—Pub. L. 95-599 inserted provisions relating to the retirement of bonds the proceeds of which were used for program projects, provisions that section was not to be construed as a commitment on the part of the United States to pay the principal of any such bonds, and provisions prohibiting inclusion of interest and incidental costs of bonds in estimated cost of completion.

PAYMENT OF INTEREST ON BONDS ISSUED PRIOR TO AND AFTER NOVEMBER 6, 1978

Section 115(c) of Pub. L. 95-599 provided that: “No interest shall be paid under authority of section 122 of title 23, United States Code, on any bonds issued prior to the date of enactment of this Act [Nov. 6, 1978], unless such bonds were issued for projects which were under construction on January 1, 1978. Interest on bonds issued in any fiscal year by a State after the date of enactment of this Act may be paid under authority of section 122 of title 23, United States Code, only if (1) such State was eligible to obligate funds of another State under subsection (a) of this section during such fiscal year and (2) the Secretary of Transportation certifies that such eligible State utilized, or will utilize, to the fullest extent possible during such fiscal year its authority to obligate funds under such subsection (a) of this section [amending section 118(b) of this title]. No interest shall be paid under section 122 of title 23, United States Code, on that part of the proceeds of bonds issued after the date of enactment of this Act used to retire or otherwise refinance bonds issued prior to such date.”

§ 123. Relocation of utility facilities

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the

construction of a project on any Federal-aid system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term “utility”, for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term “cost of relocation”, for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 100-17, title I, §133(b)(8), Apr. 2, 1987, 101 Stat. 171.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17 substituted “any Federal-aid system,” for “the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas.”.

STUDY OF PROCUREMENT PRACTICES AND PROJECT DELIVERY

Pub. L. 105-178, title I, §1213(e), June 9, 1998, 112 Stat. 201, provided that:

“(1) STUDY.—The Comptroller General shall conduct a study to assess the impact that a utility company’s failure to relocate its facilities in a timely manner has on the delivery and cost of Federal-aid highway and bridge projects. The study shall also assess the following:

“(A) Methods States use to mitigate such delays, including the use of the courts to compel cooperation.

“(B) The prevalence and use of incentives to utility companies for early completion of utility relocations on Federal-aid transportation project sites and, conversely, penalties assessed on utility companies for utility relocation delays on such projects.

“(C) The extent to which States have used available technologies, such as subsurface utility engineering, early in the design of Federal-aid highway and bridge projects so as to eliminate or reduce the need for or delays due to utility relocations.

“(D) Whether individual States compensate transportation contractors for business costs incurred by the contractors when Federal-aid highway and bridge projects under contract to them are delayed by utility-company-caused delays in utility relocations and any methods used by States in making any such compensation.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Comptroller General shall transmit to Congress a report on the results of the study with any recommendations the Comptroller General determines appropriate as a result of the study.”

§ 124. Advances to States

If the Secretary shall determine that it is necessary for the expeditious completion of projects

on any of the Federal-aid systems, including the Interstate System, he may advance to any State out of any existing appropriations the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special revolving trust fund, by the State official authorized under the laws of the State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired, and for construction which has been actually performed and approved by the Secretary pursuant to this chapter. Upon determination by the Secretary that any part of the funds advanced to any State under the provisions of this section are no longer required, the amount of the advance, which is determined to be in excess of current requirements of the State, shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced. Any sum advanced and not repaid on demand shall be deducted from sums due the State for the Federal pro rata share of the cost of construction of Federal-aid projects.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 95-599, title I, §118, Nov. 6, 1978, 92 Stat. 2699; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1226(c), June 9, 1998, 112 Stat. 193; Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.)

AMENDMENTS

1998—Pub. L. 105-178, §1226(c), as added by Pub. L. 105-206, §9003(a), struck out subsec. (a) designation before “If the Secretary” and struck out subsec. (b), which had: authorized advance of 100 per centum of cost of construction where Secretary determined that toll bridge, toll tunnel, or approach thereto meeting section 129 requirements was necessary to complete essential gap in Interstate System; provided repayment schedule; and directed that advance be made from funds apportioned to State for Interstate System and that section 103(e)(4) provisions would not apply.

Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department” in two places.

1978—Pub. L. 95-599 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of this title.

ACCELERATION OF PROJECTS

Pub. L. 94-280, title I, §141, May 5, 1976, 90 Stat. 444, as amended by Pub. L. 95-599, title I, §136, Nov. 6, 1978, 92 Stat. 2709, provided that: “Not later than six months after the completion of such project, the Secretary of Transportation shall submit a report to Congress which includes, but is not limited to, a description of the methods used to reduce the time necessary for the completion of such project, recommendations for applying such methods to other highway projects, and any changes which may be necessary to existing law to per-